

STATE OF MICHIGAN
COURT OF APPEALS

CITIZENS BANK,

Plaintiff,

and

SASIKALA VEMULAPALLI,

Plaintiff-Appellant,

v

FRANK J. DISANTO,

Defendant-Appellee,

and

LINDA L. KENNEY, a/k/a LINDA L. DISANTO,

Intervening Defendant-Appellee.

UNPUBLISHED

June 15, 2006

No. 259635

Genesee Circuit Court

LC No. 99-066157-CK

Before: Whitbeck C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiff, Sasikala Vemulapalli (plaintiff), assignee of plaintiff, Citizens Bank (Citizens), appeals by leave granted an order denying her motion for declaratory judgment. Plaintiff argues that a debt owed by defendant, Frank J. DiSanto (defendant), was not satisfied by a levy against, and sale of, property located at 300 Marr Lake Drive in Lenawee County (“the Marr Lake property” or “the property”). Because application of MCL 600.6006 allows plaintiff to request further satisfaction of the debt under the facts of this case, we reverse and remand.

Plaintiff bases her argument on the doctrine of collateral estoppel. She argues that this Court’s decision in *Eastern Sav Bank v Citizens Bank*, unpublished opinion per curiam of the Court of Appeals, issued November 4, 2003 (Docket No. 240779), precludes relitigation of whether Citizens’ levy on the Marr Lake property was effective and, therefore, of whether the levy and subsequent foreclosure and sale of the property satisfied defendant’s debt. We review de novo the trial court’s application of preclusion doctrines. *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000).

The trial court did address plaintiff's argument. However, the court appeared to conflate the doctrines of collateral estoppel and law of the case. We agree with the court's holding that the law of the case doctrine is inapplicable because it applies only to subsequent appeals of the same case. *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000). But the court improperly found that relitigation of the effectiveness of the levy was not precluded by this Court's decision in *Eastern Sav Bank, supra*. Collateral estoppel precludes relitigation of an issue in a subsequent action when: 1) a question of fact which was essential to the judgment was actually litigated and determined by a final judgment; 2) the same parties or their privies had a full and fair opportunity to litigate the issue; and 3) there is mutuality in the sense that the party who seeks to take advantage of the earlier decision would have been bound by it had it gone against that party. *Monat v State Farm Ins Co*, 469 Mich 679, 683-685; 677 NW2d 843 (2004).

Our reading of this Court's decision in *Eastern Sav Bank, supra*, makes clear that the precise issue of whether Citizens' levy was effective was explicitly considered and litigated by the parties to the *Eastern Sav Bank* suit. Each of the instant parties, in addition to the Frank J. DiSanto Revocable Living Trust ("the trust"), were parties to that suit. We conclude that, because this Court determined that the levy was void and ineffective in *Eastern Sav Bank, supra*, slip op, p 6, reconsideration of the effectiveness of the levy is precluded by the doctrine of collateral estoppel. *Monat, supra* at 683-685.

However, the fact that the levy was ineffective does not necessarily render the underlying debt unsatisfied. To decide the issue presented in the instant case, further analysis is necessary to determine the scope and legal effect of the *Eastern Sav Bank* ruling. That case was instituted by Eastern Savings Bank ("ESB"), to determine the priority of interests in the property. *Eastern Sav Bank, supra*, slip op p 2. ESB had issued a mortgage to the trust and, at the time of issuance, the trust was the record owner of the property. *Id.* In the course of the instant proceedings, however, defendant's conveyance of the property to the trust was voided. Because he was both trustee and beneficiary of the trust, the trial court determined that the trust property could be reached by his creditors. Problems apparently arose when Citizens recorded its judgment levy on the property based on its action against defendant as an individual, but ESB recorded its mortgage under the name of the trust. *Id.* at 2, 6.

Crucially, the Court in *Eastern Sav Bank* explicitly rejected the parties' arguments and the trial court's reasoning to the extent that they were based on whether ESB or plaintiff had actual or constructive notice of each other's interests, or whether the interests had been recorded within the proper chain of title. *Eastern Sav Bank, supra*, slip op, pp 3-5. This Court also found unpersuasive ESB's argument that Citizens' levy was void because it was not actually proceeding against the "realty of the judgment debtor," as authorized by MCL 600.6004 (emphasis added). *Id.* at 4-5. Rather, this Court voided Citizens' levy and execution against the trust property by relying on a comparison to principles enunciated by our Supreme Court in *Bankers' Trust Co of Muskegon v Forsyth*, 266 Mich 517; 254 NW 190 (1934). *Banker's Trust* addressed whether judgments which had been obtained in proceedings that adjudicated the liability of a trust company, in its capacity as trustee only, could be directly enforced against the trustees as individuals. *Id.* at 519-520. The Supreme Court ruled that the trustees could not be held individually liable because "[a] suit against one sued as an individual does not bind him as trustee, and, conversely, judgment against one sued in a representative capacity does not

conclude him in a subsequent action brought by or against him as an individual.” *Id.* at 520 (citations omitted).

This reasoning led the *Eastern Sav Bank* Court to conclude:

Citizens Bank’s levy executed against the . . . property owned by the trust was ineffective and void. The judgment which generated the levy of execution was taken in an action brought against Frank J. DiSanto, *an individual*. Moreover, the notice of levy was made in the context of that lawsuit brought against Mr. DiSanto, individually. The scope of the notice of levy, and the concomitant scope of execution, was therefore limited by the judgment to the property of Frank J. DiSanto in his individual capacity and could not be expanded to include the . . . property owned by the trust estate of which the judgment debtor, DiSanto, is the trustee. Consequently, because the judgment obtained by Citizens was against Frank J. DiSanto, individually, while title to the real property levied on by Citizens was held by the Frank J. DiSanto Revocable Living Trust, Citizens’ levy was therefore ineffective regarding the . . . property. [*Eastern Sav Bank, supra*, slip op, p 6.]

This Court’s reasoning and language is directly aimed at the legal efficacy of the execution by Citizens. The opinion is not aimed at merely establishing the priorities of ESB’s and plaintiff’s interests in the property based on notice or recording issues. We therefore conclude that *Eastern Sav Bank* voided both the levy and execution *ab initio*. As a result, neither Citizens nor plaintiff, as its assignee, ever gained a cognizable interest in the property.

We must now turn to the issue of what effect this result has on the satisfaction of defendant’s debt. The trial court essentially concluded that the debt was satisfied, per se, because Citizens levied against and foreclosed the property and subsequently purchased the property at the sale for an amount equal to the outstanding debt. The court cited MCL 600.6018, MCL 600.6042 and MCL 600.6051. We review the court’s interpretation of these statutes de novo. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003).

MCL 600.6018 establishes that the real estate of a judgment debtor is subject to execution, levy and sale. MCL 600.6043 requires that only one execution on property occur at a time and allows no more sales than are necessary to satisfy the judgment. Most applicable, here, is MCL 600.6051, which reads, in pertinent part:

No levy by execution on real estate is valid:

(1) Against bona fide conveyances made subsequent to such levy, until a notice thereof, containing the names of the parties to the execution, a description of the premises levied upon, and the date of such levy, is filed by the officer making the levy in the office of the register of deeds of the county where the premises are situated. Such levy is a lien thereon from the time when notice is deposited; and the lien thus obtained is, from the filing of such notice, valid against all prior grantees and mortgages of whose claims the party interested has neither actual nor constructive notice. . . . When the execution is fully paid, satisfied or discharged, the clerk of the court who issued execution, shall give to

the defendant a certificate, signed by the sheriff and under seal of the court, that the execution is satisfied or discharged; and the certificate may be recorded in the same manner as is notice.

Apparently based on MCL 600.6051, the trial court concluded that the judgment “was satisfied and extinguished when the sheriff’s certificate of execution sale was recorded, which noted the full bid and payment at the sheriff’s sale,” citing *Bank of Three Oaks v Lakefront Properties*, 178 Mich App 551; 444 NW2d 217 (1989). The court appears to have relied on generalized statements in *Bank of Three Oaks* that “[w]hen property is purchased at a foreclosure sale for an amount equal to the amount due on the mortgage, the debt is satisfied. . . . Moreover, the mortgage is extinguished at the time of the foreclosure sale.” *Id.* at 555. However, *Bank of Three Oaks* and the cases cited therein made these statements in the context of comparing the value and purchase price of the relevant property to the amounts properly due on the outstanding debts. These cases do not constitute authority for the proposition that there is a bright line rule of automatic extinction of a debt regardless of the value the creditor actually receives. In fact, the text of MCL 600.6051(1) does not establish that the issuance of a sheriff’s certificate, in and of itself, renders a debt satisfied, per se. The statute authorizes the issuance of the certificate of satisfaction “[w]hen the execution is fully paid, satisfied or discharged” (emphasis added). That is, satisfaction of the execution is a condition precedent to the issuance of the certificate. The statute does not directly contemplate the retroactive nullification of the levy and execution and, therefore, a nullification of the condition precedent.

To the contrary, MCL 600.6006 explicitly states:

If an execution is returned satisfied in whole or in part, by the sale of any property which afterwards appears not to belong to the judgment debtor, or not to be liable to execution, the court may on the application of such judgment creditor, order a new execution to be issued on such judgment, for the amount then remaining justly and equitably due thereon.

This statute allows plaintiff to request further satisfaction of the debt under the specific circumstances of this case. *Eastern Sav Bank* established that Citizens’ execution was entirely void because the property did not belong to defendant, the judgment debtor, and, therefore, was not liable to execution. Accordingly, we remand for the trial court to determine “the amount . . . remaining justly and equitably due” and to order a new execution to be issued on the consent judgment. MCL 600.6006.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Pat M. Donofrio